

DELTA PROTECTION COMMISSION

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**AGENDA ITEM #12**

May 14, 1999

To: Delta Protection Commission

From: Margit Aramburu, Executive Director

Subject: Acquisition of Land in the Primary Zone Since January 1, 1993 by Public Agencies and Nonprofit Groups
(For Commission Information Only)

Background:

At the March, 1999 meeting, Chairman McCarty asked staff to update the Commission on public agency and non-profit group ownership of land in the Primary Zone of the Delta. Staff research indicates that of the 487,625 acres of land and water in the Primary Zone, in January 1993 approximately 33,500 acres were in public agency ownership. Nonprofit agency ownership was limited to the Nature Conservancy owned the Jepson Prairie Preserve totaling 1,600 acres.

Since January 1, 1993, fee title land acquisitions total 17,850.5 acres. The total now in public and nonprofit ownership in the Primary Zone is 52,950, or approximately 11% of the Primary Zone.

The conservation easements described below total 3,495 acres.

Land Ownership as of January 1, 1993.

The Background Report on Land Use and Development, dated January 1994, describes land ownership in the Delta as of January 1, 1993 (see attached excerpt). Of the total 487,625 acres of land and water in the Primary Zone of the Delta, ports owned 4,124 acres; special districts owned about 3,000; cities and counties owned over 1,567 acres; East Bay Regional Park District owned or managed about 600 acres; the Department of Parks and Recreation owned 4,857 acres of land and water-covered area; the Department of Fish and Game owned over 8,000 acres of land and water-covered area; Department of Water Resources owned 8,545 acres; CalTrans owned 480 acres of land in addition to rights-of-way; the Corps of Engineers owned 250 acres on the tip of Grand Island; and the Navy owned about 2,000 acres used for communications facilities.

Not included in that list were 109 acres owned by the Bureau of Reclamation at the Delta Cross Channel. The Department of Water Resources also owned 193 acres at the southern tip of Liberty Farms, adjacent to Cache Slough. In addition, the State Lands Commission administers the State's sovereign ownership interests in tidelands, submerged land and bends of navigable waters--approximately 50,000 acres in the Primary Zone are water-covered.

Ports	4,124 acres
Special Districts	3,000 acres
Cities and Counties	1,567 acres
East Bay Regional Park District	600 acres
Department of Parks and Recreation	4,857 acres
Department of Fish and Game	8,000 acres
Department of Water Resources	8,545 acres
CalTrans	480 acres
Corps of Engineers	250 acres
Navy	2,000 acres
Bureau of Reclamation	109 acres

Fee Title Acquisitions Since January 1, 1993:

SPECIAL DISTRICTS:

East Bay Regional Park District (EBRPD): EBRPD serves Alameda and Contra Costa Counties and is funded through property taxes. EBRPD has acquired the eastern half of Big Break in Contra Costa County and has an option on the western half.

Big Break (Eastern Half), Contra Costa County 980 acres (1995)

Ironhouse Sanitary District (ISD): ISD owned about 2,600 acres on Jersey Island and an additional 300 acres in the Secondary Zone. ISD has since purchased most of the remainder of Jersey Island, which totals 3,470 acres.

Jersey Island, Contra Costa County 800 acres

STATE:

Department of Fish and Game: Department of Fish and Game in partnership with the Yolo Basin Foundation, purchased 3,583 acres of agricultural land in the Yolo Bypass, just south of the I-80 causeway, for restoration to seasonal wetland habitat. The area has been planted and enhanced and is managed by the State and the Yolo Basin Foundation for habitat, access, and recreation (wildlife observation and hunting).

Yolo Bypass, Yolo County	3,583 acres
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Department of Water Resources: Department of Water Resources (DWR) has been acquiring property on Sherman Island in the South Delta, and in the Hood area of Sacramento County. In 1993, DWR owned 1,037 acres on Sherman Island and 2,965 acres on Twitchell Island. DWR now owns the following:

Sherman Island, Sacramento County	8,146 acres
(Total of 9,183 acres)	
Hood, Sacramento County	
-agricultural lands	123 acres (1995)
-cold storage facility	6.5 acres (1999)

FEDERAL:

U.S. Fish and Wildlife Service: The Fish and Wildlife Service has been acquiring property within the boundary of the Stone Lakes National Wildlife Refuge in Sacramento County. The master plan for the refuge envisioned approximately 9,000 acres in public ownership north of Lambert Road, and an additional 9,000 acres of land in private ownership under management agreements between Lambert Road and Lost Slough (south of Twin Cities Road). Acquisitions to date include:

Lodi Gun Club, Sacramento County	287 acres (1994)
Agri-Versified, Sacramento County	227 acres (1997)
Lewis Ranch, Sacramento County	50 acres (1998)

In addition, the Fish and Wildlife Service has received a grant from CALFED to acquire 4,760 acre Liberty Island in the Yolo Bypass in Yolo and Solano Counties. Acquisition must await certification of environmental document currently under preparation.

Army Corps of Engineers: The Corps has been directed by Congress to acquire Little Holland Tract (1,640 acres) in Yolo and Solano Counties; negotiations have been underway for several years.

Bureau of Reclamation: The Bureau purchased the northeastern portion of Prospect Island, covering 1,228 acres in 1995. Most of the rest of the island is owned by the Port of Sacramento (1,240 acres), with a 37 acre area at the southeast tip owned by Department of Fish and Game. The Army Corps of Engineers and Department of Water Resources are jointly proposing to restore the Bureau's lands to tidal, aquatic habitat.

Prospect Island, Solano County

1,228 acres (1995)

NON-PROFIT:

Solano County Farmlands and Open Space Foundation: The Jepsen Prairie Preserve was transferred from the Nature Conservancy to the Solano County Farmlands and Open Space Foundation in 1997.

Jepsen Prairie Preserve, Solano County

1,566 Acres (1997)

Cosumnes Preserve: The Nature Conservancy has applied for and received funds from CALFED for acquisition of McCormack-Williamson Tract, Sacramento County. Transfer of property is imminent.

McCormack-Williamson Tract, Sacramento County

1,654 acres (1999)

Conservation Easements:

Several entities/agencies have purchased easements over privately owned property with the intent of protecting habitat on those lands. Easements have been acquired on several duck clubs in the Yolo Bypass, on mitigation sites, and on agricultural land with the intent of converting the land to seasonal habitat. The total acreage in the listed conservation easements total 3,495 acres. Delta Protection Commission records do not indicate date of acquisition of all of the following conservation easements.

Empire Tract, San Joaquin County: Wildlife Conservation Board acquired a conservation easement on a 261 acre parcel (1995). The easement retires agriculture and restores seasonal wetland habitat.

Tyler Island, Sacramento County: Wildlife Conservation Board and Natural Resources Conservation Service purchased easements on an 800-acre parcel with intent of restoring seasonal wetland habitat (1998).

Saxon Duck Club: In the Yolo Bypass, a conservation easement on 480 acres of managed wetland.

Yolo Bypass-Skyraker Duck Club: In the Yolo Bypass, a conservation easement on 340 acres of managed wetland.

Duck Club: In the Yolo Bypass, a conservation easement on 158 acres of managed wetland.

Terminous Tract: In San Joaquin County, a conservation easement on 30 acres adjoining Sycamore Slough.

Medford Island: In San Joaquin County, several conservation easements totalling about 300 acres on Medford Island, a privately-owned mitigation bank.

Wright Elmwood Tract: Adjacent to San Joaquin River, a conservation easement over 50 acres of habitat.

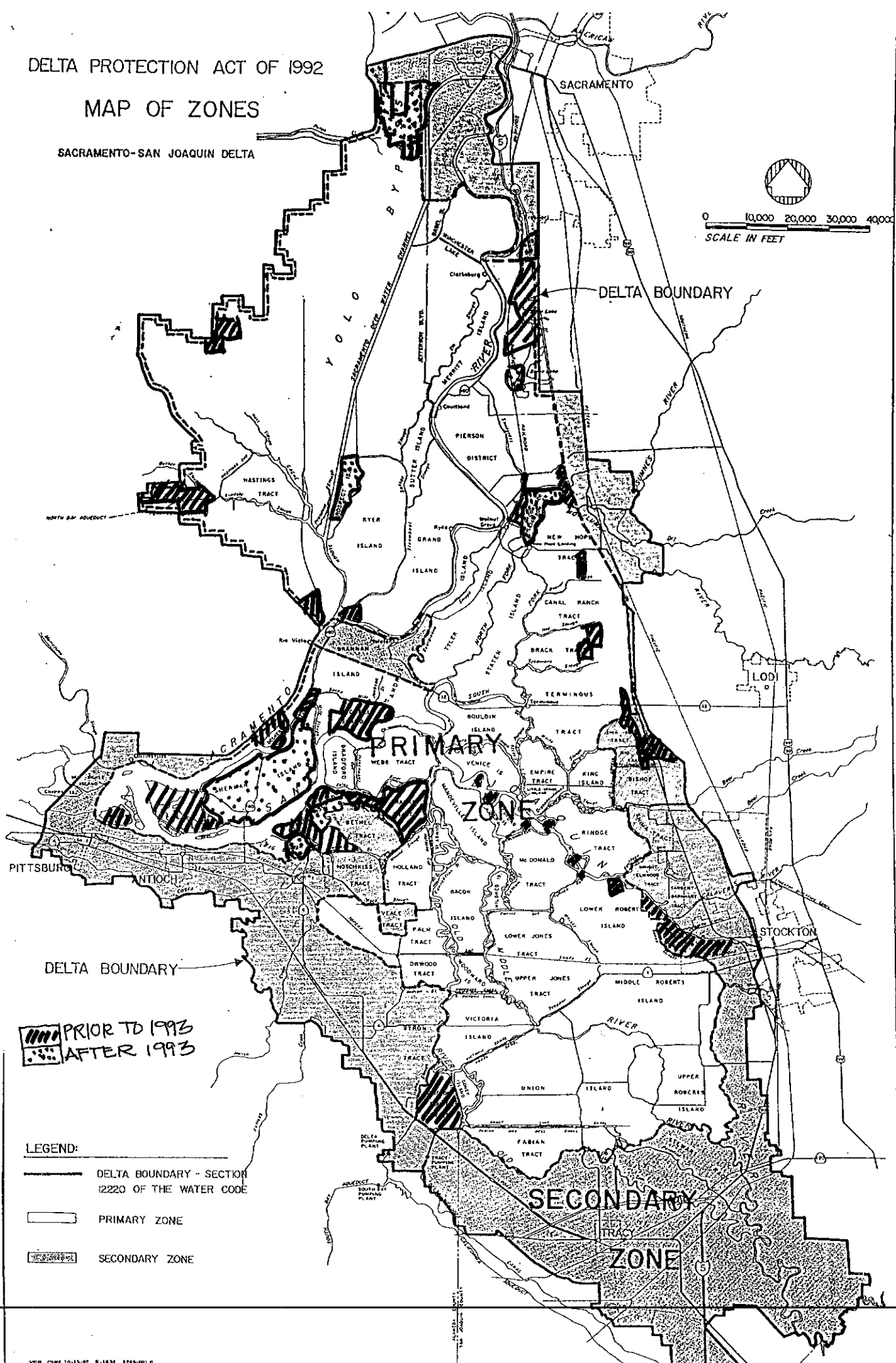
Palm Tract: On the eastern half of Palm Tract, in Contra Costa County, a conservation easement covering 1,076 acres of agriculture-seasonal and permanent wetland, created as mitigation for impacts associated with construction of the WAPA power lines through the Delta.

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DELTA PROTECTION ACT OF 1992

MAP OF ZONES

SACRAMENTO-SAN JOAQUIN DELTA



CHAPTER III: OWNERSHIP OF LAND AND UNDERWATER AREAS

Ownership of the land in the Delta reveals the amount, percentage, and location of land subject to local jurisdiction as opposed to State and federally-owned land which is not subject to local controls. The total acreage within the Primary Zone is 487,625 acres.

1. Private Ownership

In 1850, when California became a state, the United States granted jurisdiction over "swamp and overflowed lands" to California (11). The land was surveyed by federal and state surveyors and by 1871 was measured at two million acres. Much of the "swamp and overflowed" land was sold or "patented" to private citizens for the purpose of agricultural reclamation. A line was drawn around the Delta for future state determination if these islands were swamp and overflowed lands, submerged lands, or uplands. It is this original "lowlands boundary" that became the statutorily defined Delta. The "swampland" which was sold during a 30-year period also included both navigable tidelands and submerged lands--lands which were to be held in the public trust.

Landowners "reclaimed" the rich peat soils of the Delta for agriculture by building low, and then higher, berms along the channels and draining the islands. Due to the primitive surveying methods then in use, and due to limits in the accuracy of surveying wetland and water areas, the State Lands Commission believes that some of the lands now claimed in private ownership are subject to the public trust. The State Lands Commission has never been funded to carry out a comprehensive survey and analysis of the public trust lands remaining in the Delta. Land ownership is resolved on a case-by-case basis, when property owners propose development on Delta property. Property owners claim State Land Commission's cloud over their property creates legal and financing burdens and hurdles.

2. Ports

The Ports of Sacramento and Stockton own property in the Delta. The Port of Sacramento Ship Channel is 47 miles long. The Channel itself is 250 feet wide and is bounded by levees along both sides. A toe channel is located at the base of the west levee. The overall channel occupies about half of the property purchased to construct the channel which covers about 3,000 acres, the land is between 350 and 750 feet wide. The Port itself is located in the secondary zone in West Sacramento (12).

The Port of Stockton purchased several islands in order to construct the Stockton Deep Water Channel. The Port owns Donlon Island (225 acres), the center of Browns Island (100 acres), Mandeville Tip (176 acres), Venice Cut (211 acres), Tule Island (36 acres), North Headreach (53), North and South Spud Islands (28 and 60 acres), a portion of Acker Island

(7 acres), and a portion of Roberts Island (228 acres), for a total of 1,124 acres in the Primary Zone. Some of these lands are leased for recreational use, some are wetlands, and some are designated for dredge spoils disposal for necessary maintenance dredging. In the secondary zone, a 613 acre site on Roberts Island is used for dredge spoils disposal (13).

3. Reclamation Districts

Districts own limited amounts of land for ditches, dredge spoils disposal, canals, pump sites, levees, and mitigation sites. Reclamation districts are self-regulating.

4. Special Districts

Special districts, e.g. fire districts and school districts, own small amounts of property associated with their mission. For example, the Clarksburg Fire District owns the land upon which the firehouse is constructed. The Clarksburg School District owns land for school sites. The Ironhouse Sanitary District in Contra Costa County has purchased 2,900 acres Jersey Island to use for future on-land disposal of treated wastewater (14).

5. Cities and Counties

Cities and Counties own small amounts of land for present and future needs. Sacramento County owns about 1,567 acres within the boundaries of the proposed Stone Lake Wildlife Refuge.

6. East Bay Regional Park District

The District, which serves as the Park Department for Contra Costa County and which is a special district funding by property taxes on lands within Alameda and portions of Contra Costa County, manages 595 acres of land on Browns Island at the west edge of the Delta, which is leased from the State Lands Commission. The island is managed for wildlife habitat and has no public facilities.

The District has acquired portions of Big Break (8.45 acres), a flooded island in Contra Costa County, just east of the Antioch Bridge. The wetland area will be part of a regional shoreline facility linking Pittsburg, Antioch and the eastern Delta areas. A regional educational facility, called the Delta Environmental Science Center, is proposed by a non-profit group.

7. State Lands Commission (15)

The State Lands Commission administers the State's sovereign ownership interests in tidelands, submerged lands, and beds of navigable waterways. Tidelands are those lands which lie between the lines of ordinary high and ordinary low water on tidal waterways. Submerged lands lie below the line of ordinary low water on tidal or non-tidal waterways. These lands were acquired by the State upon its admission to the Union in 1850. The State holds its sovereign interests in these lands for the benefit of all the people of the State, for the statewide Public Trust purposes of waterborne commerce, navigation, fisheries, water-related recreation, natural habitat, and ecological preservation.

The landward boundaries of the State's sovereign interests are generally based upon the lines of ordinary high and low water as they last naturally existed, prior to any filling or artificial accretion, and thus may not be readily apparent from present day site inspections. Extensive studies of historical data are generally necessary to determine the location of the boundaries between the State's sovereign lands and adjacent privately owned lands.

To date, the precise nature, extent and location of the State's sovereign interest in most areas of the Delta has not been defined by agreement or court judgment. Except where such agreement or judgments exist, the State's sovereign ownership is not recorded in the official records of the County Recorders. The Commission is authorized to enter into agreements establishing the boundaries of the State's sovereign lands. The Commission may also execute land exchanges, whereby, under certain limited circumstances, it may terminate the State's sovereign interests in lands that have been filled and reclaimed, and are no longer useful for Public Trust purposes.

The State's sovereign interests may consist of fee ownership of unsold tidelands and submerged lands, or a retained public trust easement over tidelands validly sold pursuant to legislation enacted during the 1800's. Sales of sovereign lands were later determined to be unconstitutional and are no longer permitted. Uses of sovereign lands held in fee by the State must be consistent with the Public Trust. Uses of privately held lands which remain subject to the State's Public Trust easement may not be inconsistent with Public Trust needs of the areas. Thus, for example, if a specific site which is subject to State sovereign interests has been identified as critical habitat for a threatened or endangered species, the Commission would object to any development of the property which would damage those habitat values. On the other hand, projects which would benefit or enhance Public Trust values would be favored by the Commission.

In addition to sovereign Public Trust lands, the State also acquired from the federal government swamp and overflowed lands; marshy lands which lay above the ordinary high water mark. These lands were authorized to be sold by State patent into private ownership for reclamation purposes. Unfortunately, land descriptions in the original State patents were often imprecise and inaccurate, and encompassed lands which were not swamp and overflowed in character, and thus not subject to sale by the State. To the extent the lands

described in the Swamp and Overflowed Land Patents were in fact swamp and overflowed lands (above the last natural ordinary high water mark), they passed into private ownership free of any sovereign interest. However, to the extent such lands were in fact tidelands, they generally passed into private ownership subject to the States's retained Public Trust easement. If, in their last natural condition, these lands included submerged lands, those submerged lands did not pass into private hands and remain in State ownership.

The Commission retains in its Sacramento office many historical records which are relevant to determining title interests throughout the Delta. The Commission's records are available for public inspection upon reasonable notice.

8. Department of Parks and Recreation (1,450 acres of land/4,857 total acreage)

The Department of Parks and Recreation is mandated to purchase and develop property for recreation activities of statewide value. The Department has had a presence in the Delta since 1954 when Brannan Island State Park was developed.

The Department holds title to 3,542 acre Franks Tract (a flooded island) in Contra Costa County; to 225 acres at Brannan Island, a developed park facility at the southern tip of Sacramento County; to 134 acres in the Delta Meadows area, an unimproved, lushly vegetated waterway and old railroad right-of-way near Locke in Sacramento County; and to 1,090 acres in the Stone Lake area of Sacramento County.

Brannan Island is developed for boating, camping, swimming, wind-surfing, and other recreation uses.

Franks Tract is used for boating, fishing, and seasonally for hunting (private hunting blinds are located on sites rented from the Parks Department).

A 3,144 linear foot wave wall is proposed at Franks Tract, in cooperation with the Department of Water Resources. The \$4 million project is funded by Prop 70 open space bonds.

The Department has no General Plan for the Delta Meadows area; one is required prior to making any permanent improvements.

The Stone Lakes property may become part of the proposed U.S. Fish and Wildlife Service Stone Lakes Wildlife Refuge.

9. Department of Fish and Game (8,080 acres)

The Department of Fish and Game is mandated with protecting and managing wildlife and wildlife habitat throughout the State of California. The Wildlife Conservation Board is the arm of Department of Fish and Game which purchases lands. The lands are then managed for wildlife habitat by the Department; some of these lands are also used for seasonal recreational uses including hunting, dog training, hiking, bird watching, etc.

The Department owns several large pieces of land managed for wildlife habitat (16) including: Woodbridge Ecological Reserve: 352 acres; Sherman Island Wildlife Area: 3,100 acres; Calhoun Cut Ecological Reserve: 967 acres; Yolo Bypass: 2,990 acres; and Webb Tract Berms and Islands: 285 acres.

In addition, the Department owns several small islands: Sycamore Island (13 acres); Acker Island (25 acres); Cabin Slough Islands (14.64 acres); Decker Island (34.5 acres); Miner Slough Islands (34.5 acres); Lost Slough Islands (38.5 acres); and Rhode Island (67 acres).

The Department owns fishing access sites at: Westgate landing; Brannan Island; Cliff House; Georgiana Slough; Hogback Island; and Clarksburg. These access sites are managed by the Counties.

10. Department of Water Resources (8,545 acres).

The Department of Water Resources (DWR) owns and manages the State Water Project which provides drinking water for two-thirds of the State of California and provides irrigation for thousands of acres of agricultural lands in the fertile Central Valley.

In Contra Costa County, the Department owns the 3,660-acre Clifton Court Forebay and surrounding lands, and 371 acres at the Delta Intake Channel which are leased for grazing; in Sacramento County, 2,965 acres on Twitchell Island, 1,037 acres on Sherman Island, and .95 acres at the Hood water diversion testing facility; and in Solano County, 40 acres for the North Bay Aqueduct. DWR owns 472 acres of ponds and surrounding lands in Sacramento and San Joaquin Counties, which is leased for farming (17).

DWR is planning to buy all of Sherman Island and all of Twitchell Island to convert to wildlife habitat to prevent further subsidence (18). No environmental review was needed for acquisition and conversion from ag to wildlife habitat on Sherman and Twitchell Islands in the West Delta.

The South Delta Plan environmental document is due September of 1994 and the North Delta Plan environmental document is due June of 1995; these documents will detail any needed acquisitions.

11. CalTrans

CalTrans maintains three highways within the Delta: State Route 4; State Route 12, State Route 160 (River Road), and portions of Interstate 80; Interstate 5 forms much of the eastern boundary of the Primary Zone. Most of Highway 160 is located within easements from the Reclamation Districts. Right-of-way was purchased for the widening project south of Rio Vista. CalTrans owns 480 acres of land between I-80 and the railroad right-of-way at the north end of the Yolo Bypass which is proposed to be enhanced for wildlife habitat.

There are plans to acquire additional right of way to allow Route 12 to be widened for passing lanes in San Joaquin County in the years 2007-2008.

12. Federal Agencies

a. U.S. Army Corps of Engineers. The Corps owns a parcel of land on the southwestern tip of Grand Island which was once the Isleton Dump, and has been used for dredge spoils disposal.

b. U.S. Navy. A naval reservation is located in north eastern Solano County totalling 1,900 acres and another in the northern end of the Yolo Bypass in Yolo County. These lands are used for communications facilities.